Supreme Court, U.S.
FILED

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No. ____

IN THE

Supreme Court of the United States

ROBERT B. BLANDFORD, ABNER SCHOENWETTER, AND DIANE H. HUANG,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

BARRY M. HARTMAN
DYLAN B. CARP
KIRKPATRICK & LOCKHART, LLP
1800 Massachusetts Ave. NW
Washington, DC 20036
(202) 778-9000

DANIEL J. POPEO
PAUL D. KAMENAR
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave. NW
Washington, DC 20036
(202) 588-0302

Counsel for Petitioners

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QUESTIONS PRESENTED

The Lacey Act prohibits the importation of any fish or wildlife in violation of "any law or regulation of any State or in violation of any foreign law." Petitioners, seafood importers and dealers, were convicted of various charges of *inter alia,* conspiring to violate the Lacey Act, smuggling, and money laundering, all with respect to the commercial importation of lobster tails from Honduras, because a small percentage of the tails did not meet certain Honduran regulations such as size limits, and all tails were shipped in clear plastic bags instead of specified boxes. For this regulatory offense, Petitioners Blandford and Schoenwetter were each sentenced to serve *eight years* in prison; Petitioner Huang was sentenced to serve *two years*.

The Honduran Government, through its courts, Embassy, and Attorney General, ruled and declared that the Honduran provisions that served as the predicate for the Lacey Act charges and general verdict were either void *ab initio* or otherwise of no legal effect. A majority of the panel of the court of appeals declined to give deference to the official views of the Honduran Government as to the meaning of its laws. The Questions Presented are:

1. Whether the court of appeals erred and violated due process by failing to give proper deference to the official position of the Honduran Government that its laws and regulations that served as predicate offenses for the criminal convictions were void or otherwise invalid, and on that basis, a reversal of the convictions was required.

2. Whether liability under the Lacey Act may be premised on violations of foreign *regulations*, when the statute plainly provides that liability may be established on actions "in violation of *any law or regulation* of any State or in violation of *foreign law*."

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, David Henson McNab was a defendant/appellant below and is served as a respondent herein.

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PETITION FOR A WRIT OF CERTIORARI

Robert B. Blandford, Abner Schoenwetter, and Diane H. Huang, respectfully petition this Court for a writ of certiorari to review the judgment in this action of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's majority opinion in *United States v. McNab,* as amended, is reported at 331 F.3d 1228 and is reprinted in the Appendix hereto ("App." at 1a). The dissenting opinion of Circuit Judge Fay is reported at 331 F.3d 1247 and is reprinted at App. 33a. The pretrial order and opinion of the district court of October 12, 2000, regarding the determination of foreign and state law and certain motions to dismiss, is unreported and appears at App. 41a. The post-trial order and opinion of the district court of August 28, 2001, regarding further developments in Honduran law is unreported and appears at App. 64a. The order granting the petitions for rehearing in part, and denying the suggestion for rehearing *en banc*, with Circuit Judge Fay dissenting, is reported at 331 F.3d 1228, and is reprinted at App. 80a.

JURISDICTION

The judgment of the court of appeals was first entered on March 21, 2003. Petitioners timely filed petitions for rehearing and suggestions for rehearing *en banc*, and an amended opinion and order granting the rehearing petitions in part and denying the suggestions for rehearing *en banc* was entered on May 29, 2003. The time to file this Petition was extended by Associate Justice Anthony Kennedy to October 24, 2003. The Court has jurisdiction in this case pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND HONDURAN PROVISIONS

The Fifth Amendment to the Constitution provides in relevant part that "No person shall be * * * deprived of life, liberty, or property, without due process of law * * *." The relevant portions of the Lacey Act Amendments of 1981, 16 U.S.C. § 3371, *et seq.*; 18 U.S.C. §§ 2, 371, 545 1956(h), 1957; Fed. R. Crim. Proc. 26.1; Fla. Statute § 370.07; Fla. Admin. Code Ann. r.68B-24.003; Honduran Resolution 030-95; Agreement 0008-93; Article 70(3) of the Fishing Law of 1959; Decree No. 40; Decree No. 157-94; Decree No. 198-2001; Decree No. 245-2000; and related provisions of Honduran law, are set forth in the Appendices to this Petition.[1]

STATEMENT OF THE CASE

Petitioner Robert Blandford is a United States seafood importer who operated his business through his company, Seamerica Corporation and Primestar Foods Incorporated. Petitioner Abner Schoenwetter is also a United States seafood importer operating through Horizon Seafood and Triangle Transport. Together, they would import seafood, including Caribbean spiny lobster tails,[2] and

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[1] Additional materials have been submitted in an Appendix filed by co-defendant David Henson McNab with his separate Petition for Writ of Certiorari. Petitioners here refer the Court to those additional materials, and to the extent provided by the rules and practice of this Court, adopt the arguments made in that Petition.

[2] The Caribbean spiny lobster, *Panulirus argus*, is a species of lobster found in waters from Florida to Brazil, and is not listed as either endangered or threatened under the Endangered Species Act.

sell it to seafood processors and distributors. Petitioner Diane H. Huang, an employee of American Ex-Im Corporation (Ex-Im), a California-based seafood distributor, purchased lobster tails from Seamerica, further processed them at various seafood facilities, and sold the new processed product to large commercial restaurants such as Red Lobster.

Co-defendant David Henson McNab is a Honduran businessman who owns and operates a fleet of fishing vessels that would catch spiny lobsters anywhere from 100 to 350 miles from the coast of Honduras in the Caribbean Sea. From time to time over a period of several years, he would ship the treated and frozen spiny lobster tails in clear plastic bags to the United States where they were consigned to Blandford's company. The shipments would regularly go through inspections at Roatan Island, Honduras, and then be shipped to Bayou la Batre, Alabama, where the lobster tails that were subject to inspection and cleared by U.S. Customs and the Food and Drug Administration (FDA). The lobster tails were resold to dealers such as Ex-Im and other companies for further processing and distribution.

The National Marine Fishery Services (NMFS) received an anonymous facsimile on February 3, 1999 stating that one of McNab's shipments to Seamerica was due to arrive in Alabama on February 5, 1999, and was allegedly carrying lobster tails containing "undersize (3&4oz) lobster tails" that were packed in clear plastic bags instead of cardboard boxes, all of which was alleged to be in violation of Honduran law or regulation.

When the ship arrived, NMFS agents held the ship without explaining why they were doing so. Several weeks later, NMFS transported the frozen lobster tails to a facility

in Florida. Over the next *six months*, NMFS agents and officials traveled back and forth to Honduras and communicated with Honduran regulatory agency employees and officials to try to figure out what Honduran laws or regulations might have been violated by the still uninspected shipment of lobster tails.

The three primary Honduran laws or regulations that were thought to be relevant were (1) Resolution 030-95 issued in December 1995 that allegedly prohibits harvesting lobsters whose tails are less than 5.5 inches (App. 121a)[3]; (2) Regulation 0008-93, a comprehensive regulation specifying in great detail how fish are to be cleaned, processed and packaged, including the provision for packaging in cardboard boxes (App. 115a); and (3) Article 70(3) of the Fishing Law of 1959 which allegedly prohibits the capture of egg-bearing female lobsters (App. 120a).

Armed with the above-listed documents, the NMFS agents at last began to inspect the lobster tails which NMFS had earlier shipped to Florida. The agents discovered that only about three percent of the shipment consisted of tails that were less than 5.5 inches in length, and that some seven percent had evidence of having been egg-bearing. But because the entire load of some 70,000 pounds of lobsters were all packed in bulk clear plastic bags instead of

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[3] The NMFS must have been surprised to learn of the tail size limits of Honduran spiny lobster: the agency's official price sheets available to dealers at the time listed market prices for Honduran spiny lobster tails at two, three, and four ounces. App. 167a. At trial, a government witness testified that approximately fifty percent of all four ounce tails would measure less than 5.5 inches, and that all two and three ounce tails would measure less than 5.5 inches. It is unclear why the NMFS would have an offical price list for seafood it claims are illegal to import.

boxes, they declared that the *entire* shipment was "illegal" and subject to forfeiture.

Not satisfied with seeking substantial forfeiture and severe civil penalties and remedies, federal prosecutors indicted Petitioners and Mr. McNab. They were all convicted by a jury's general verdict on various, but not all the same, counts of conspiracy, smuggling, money laundering, false labeling, and Lacey Act violations with respect to the importation of lobster tails from Honduras over a period of several years. App. 75a.

The underlying premise for the indictment and convictions was the charge that the Petitioners had violated the Lacey Act by importing and selling lobster tails over several years in alleged violation of three Honduran laws and regulations. Thus, the defendants were convicted of "smuggling" lobster tails because they were packaged in clear, transparent plastic bags that were regularly inspected and passed by Customs and FDA inspectors, rather than being packed in opaque cardboard boxes as allegedly required by Honduran regulation; and that a small percentage of the lobster tails imported were found upon closer inspection to have been less than 5.5 inches in length and/or containing evidence of having borne eggs, and thus, in violation of two other Honduran regulations or resolutions. Notably, the Petitioners were not charged with violating the egg-bearing provision. The "money laundering" charges were based simply upon the normal commercial dealer practice of paying for the seafood in question.

At the foreign law hearing to determine the validity of the Honduran regulations upon which the Lacey Act and related charges were predicated, the district court rejected

the expert testimony offered by defendants that Resolution 030-95 governing the size was void *ab initio* inasmuch as it was procedurally defective when it was issued in 1995; that the hygiene Regulation 0008-03 had been repealed in 1995 when its enabling legislation was repealed; and that Article 70(3) was repealed in February 2001 with retroactive effect and otherwise did not proscribe harvesting of egg-bearing lobsters at the time. Instead, the court agreed with the testimony of Liliana Paz, a mid-level official and legal advisor to the Honduran Agriculture Department, that all the laws in question were valid. The court denied the motions challenging the Honduran laws on October 12, 2000. App. 41a.

Although all three Petitioners are hardworking, business persons with families to support and no prior criminal history, Petitioners Blandford and Schoenwetter were each sentenced under the Sentencing Guidelines to draconian prison term of 97 months, or *eight years*. Mrs. Huang was sentenced to prison for 24 months or two years.[4] App. 172a-177a.

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[4] Co-defendant McNab was also sentenced to serve 97 months or eight years in prison. To put this in proper perspective, these severe sentences are comparable to pre-Guideline sentences of *24 years* and *6 years* respectively for first offenders, inasmuch as before 1987, defendants were eligible for, and likely received, parole after serving one-third of their sentence. These sentences are longer than what some drug smugglers receive. *See, e.g., United States v. McPhee*, 336 F.3d 1269 (11th Cir. 2003) (57-month sentence for possessing with intent to distribute 100 kilograms of marijuana on board vessel). Because of the Sentencing Guidelines, the sentencing score was based on the total value of the shipments of unboxed lobsters over a five-year period. The sentencing range computed under the Guidelines was 97 to 121 months. Thus, even though the court sentenced Blandford and Schoenwetter at the "low" end of the range, in order to even meet that level with respect to Schoenwetter, the court had to "break open" one

Following his conviction, defendant McNab launched a legal challenge in the Honduran Court of the First Instance of Administrative Law and was successful in obtaining a ruling that declared on May 23, 2001, that Resolution 030-95 was void *ab initio* because it was defectively promulgated. App. 101a. That decision was affirmed on appeal. App. 112a. The district court conducted a post trial hearing on the foreign law issue, but again rejected McNab and Petitioners' challenge to Honduran law on August 21, 2001.

In the appeals court, the Honduran Government, through its Embassy in the United States, filed an amicus brief advising the court of the *official* position of the Honduran Government that the Honduran regulations in question were either void or of no legal effect due to rulings and subsequent developments in the Honduran courts and Congress, and the convictions were fatally defective. The view also included the Attorney General of Honduras (App. 128a), the Secretary of State for Agriculture and Livestock (App. 143a), and the Honduran Commissioner on Human Rights. Even the federal prosecutor's star witness, Liliana Paz, recanted her testimony after the Honduran court ruling and agreed with defendants that Resolution 030-95 was void retroactively.

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of the maximum sentences of 60 months that normally would have run concurrently, and split it in two, with 37 months running *consecutively* to the other maximum sentence of 60 months in order for the total combined sentence to reach the draconian 97-month minimum. See App. 173a. In short, statutory *maximum* sentences are now being sought by prosecutors and imposed by the courts to impose mandatory *minimums* for first offenders. Members of this Court and other jurists have publicly condemned such harsh and unfair sentences. Prosecutors readily know they can take advantage of the Guidelines when prosecuting citizens for even minor regulatory offenses.

As an initial matter, the court of appeals correctly determined that because all the defendants were convicted by general verdicts based on the three Honduran laws, there was no way to determine on which law the jury based its verdict. Accordingly, "if any of the three Honduran laws * * * were invalid during the time period covered by the indictment, the defendants' convictions must be reversed." App. 17a. (citing *Mills v. Maryland*, 486 U.S. 367, 376 (1988)[5]

Although professing its need to have "consistency and reliability from foreign governments with respect to the validity of their laws," App. 22a, the majority panel refused to rely on the most consistent and reliable sources available to it, and instead, opted to base its decision on the meaning of foreign law on the views of Liliana Paz, a lower-level government employee who testified at trial but later recanted. In the name of "finality," the majority truncated its search for the meaning of Honduran law even though the issue of foreign law is a matter to be decided *de novo,* and notwithstanding that the Petitioners' case was not "final" because it was still on direct review.

Circuit Judge Fay dissented, stating that he would have properly deferred to the official position of the Honduran government, rather than on the recanted

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[5] To the extent that Florida laws were charged against Petitioners, they were lumped with the three Honduran provisions at issue; therefore, there is no way to know if the jury convicted the defendants on Florida or Honduran law. There was only one count that did not depend on Florida or Honduran law: a false labeling charge under the Lacey Act in Count 47 against Petitioner Huang. The court of appeals rejected her challenge to that count without any opinion. No further review on that count is sought in this Court.

testimony of a lower-level employee. Judge Fay concluded that with respect to Resolution 030-95, "what was thought to be a crime turns out not to be a crime under Honduran law," and that "under both U.S. and Honduran law, retroactive application is warranted for a criminal defendant charged or convicted of a subsequently declared invalid criminal statute." App. 36a. *See, e.g., United States v. Goodner Brothers Aircraft*, 966 F.2d 380 (8th Cir. 1992).

On petitions for rehearing, the court deleted a statement in footnote 24 of its original opinion that it was proper to defer to federal prosecutors for the meaning of foreign law rather than the foreign government itself, but otherwise offered no principled reason as to why the official position of the Honduran government as to the meaning and validity of its own laws should be rejected.

REASONS FOR GRANTING THE PETITION

While this case deals with the government's regulation of a natural resource, something infinitely more important is endangered here: the Petitioners' liberty interests and their right to due process. As one jurist poignantly remarked in another fish and wildlife enforcement case:

> We share the dissent's concern about the depletion of natural resources. * * * However, a salutary end may not be accomplished by unlawful means. The protection of individual liberty, as embodied in the requirement that no person be subjected to criminal sanctions except pursuant to lawful authority, is also an important value in a free society. When the twain conflict, the former must yield to the latter.

United States v. Alexander, 938 F.2d 942, 946 n.7 (9th Cir. 1991) (Kozinski, J.). In this case, the Petitioners had a

right to be tried on the basis of a *valid* law. A majority of the panel, however, in its haste to terminate the examination of the validity of the Honduran provisions in question in the interests of "finality," wrongly denied the Petitioners their right to due process.

I. THE PROPER DEFERENCE THAT FEDERAL COURTS SHOULD GIVE TO THE OFFICIAL VIEWS OF A FOREIGN GOVERNMENT ON THE MEANING AND VALIDITY OF ITS OWN LAWS RAISES AN IMPORTANT QUESTION OF FEDERAL LAW THAT WAS DECIDED BY THE COURT BELOW IN A WAY THAT CONFLICTS WITH DECISIONS OF THIS COURT, ANOTHER PANEL OF THE ELEVENTH CIRCUIT, AND OTHER COURTS OF APPEALS, AND DENIES DUE PROCESS

A. The Question Is of Exceptional Importance

The level of deference that federal courts should give to foreign countries as to the meaning of their own laws raises a question of exceptional importance in the administration of justice that implicates sensitive issues of foreign relations, the act of state doctrine, international comity, and the rule of law. The question is all the more important in this case because its answer will determine whether Petitioners will be incarcerated for up to eight years in federal prison for importing lobster tails that allegedly did not comply with certain Honduran fishing laws and regulations that have been since ruled void or repealed, and without legal effect.

Because of our growing global economy, increasing international trade, and bilateral and multilateral commitments in a number of substantive areas, including commercial, tax, and environmental matters, it is apparent that more disputes, including increased enforcement of the Lacey Act, will end up in federal courts. Those courts will be called upon to interpret and apply foreign laws and regulations in the administrative, civil, and criminal contexts. Accordingly, the proper standard of deference

that a federal court should accord a foreign country's interpretation of its own laws is not only an important issue, but also an increasingly recurring one, that should and can be resolved by this Court in order to ensure consistency in this area of foreign relations.

The importance of this issue and the need to decide it are further underscored by the extraordinary reaction from a sovereign country to the misinterpretation of its laws that served as predicate to convict and incarcerate one of its citizens for eight years in the United States.

Not only has the Embassy of Honduras filed two briefs in the court of appeals objecting to the misinterpretation of its laws (one at the merits stage, and the second in support of the rehearing petition), it is also expected to file its views in this Court in support of the parties' petitions. In its briefs filed below, the Republic of Honduras noted that the trial court ruling "has had and will continue to have a chilling effect on the Honduran fishing industry, were it to stand. Principles of international law and comity are threatened by the District Court's ignoring the authoritative exposition of Honduran law by the relevant Honduran legal authorities." Brief Amicus Curiae of the Embassy of Honduras at 4. To ignore the "official Honduran Governmental position * * * would be an unprecedented violation of international law." Brief Amicus Curiae of Embassy of Honduras on Rehearing, at 11.

The Republic of Honduras has formally submitted its position on the matter with the U.S. Department of State, and included the official position of the Honduran Ministry of Agriculture and Livestock confirming that Resolution 030-95 was void *ab initio*. *Id.* at 11, n.14.

Both the former and current Attorneys General of the Republic of Honduras, the legal representative of Honduras who is constitutionally empowered to opine as to the validity of Honduran laws, have formally issued their opinions about the meaning of Honduran law in this case. App. 124a-128a. Finally, the National Human Rights Commission of the Republic of Honduras has further stated

its agreement that the Resolution was void and that one of its citizens is being illegally incarcerated and denied his human rights.

Because of the important international implications of the question presented and its impact on the proper administration of justice, a writ of certiorari should issue to the court of appeals on this ground alone. *See, e.g.*, *Christopher v. Harbury*, 536 U.S. 403, 412 (2002) (review granted because of foreign affairs implications); *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480 (1983).

B. The Decision Below Conflicts With Decisions of this Court, the Eleventh Circuit itself, and the Second, Seventh, and District of Columbia Circuits.

This case warrants review by the Court because the decision below is inconsistent with or conflicts with decisions of this Court and lower federal courts with respect to the proper deference due a sovereign nation's interpretation of its own laws and judicial decisions. This case is a particularly suitable vehicle to answer this question because it is one where the foreign government itself has vigorously disputed the misinterpretation of its laws by United States courts, and as noted, is expected to file its views in this Court in support of this petition.

A majority panel of the court of appeals, in its attempt to interpret the meaning and validity of Honduran law and regulations that served as the predicate for the criminal convictions in this case, utterly failed to give any meaningful deference to the authorized representatives of the Honduran government, namely, the Embassy of Honduras, the Attorney General of Honduras, and other high-ranking officials authorized to represent the Republic of Honduras. Although professing its need to have "consistency and reliability from foreign governments with respect to the validity of their laws," App. 22a, the majority panel refused to rely on the most consistent and reliable sources available to it, and instead opted to base its decision on the meaning of foreign law on the views of a

few lower-level government employees proffered at trial. The failure by the panel majority to accord deference to the official views of the Honduran government is in conflict with decisions of this Court and other circuit court, and violated Petitioners' right to due process.

1. Courts and international law recognize the deference to be given to the "official voice" of a foreign government when determining its laws. International legal principles, such as the act of state doctrine, limit "for prudential rather than jurisdictional reasons, courts in the United States from inquiring into the validity of a recognized foreign sovereign's public acts committed within its own territory." *Honduras Aircraft Registry, Ltd. v. Gov't of Honduras*, 129 F.3d 543, 550 (11th Cir. 1997) cited in *Fogade v. ENB Revocable Trust*, 263 F.3d 1274, 1293 (11th Cir. 2001). A "public act" has been defined to include "a statement made by someone with the authority to exercise sovereign power." Restate. Third of Foreign Relations Law of the United States, §443, Reporter's Note 3. These acts include a sovereign's right to regulate its exports and industries. *MOL, Inc. v. Peoples Republic of Bangladesh*, 736 F.2d 1326, 1328-29 (9th Cir. 1984).

The United States does not ordinarily question the official acts of foreign governments because to do so would "very certainly imperil the amicable relations between governments and vex the peace of nations." *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 304 (1918). In this case that "official voice" came from the Honduran Embassy, which, like all embassies, has a presumption of authority. *Aquamar v. Del Monte Fresh Produce N.A., Inc.*, 179 F.3d 1279, 1297 (11th Cir. 1999). "[A]mbassadors have broad powers to bind the countries they represent." *Id.* Indeed, the Eleventh Circuit concluded in *Aquamar* that the district court "should have accepted [the Ambassador's] authority to [act] on behalf of Ecuador." *Id.* at 1293. In doing so, the court correctly noted that foreign policy considerations should caution against "questioning an ambassador's representations on behalf of his or her country before the courts * * * would implicate the act of state doctrine." *Id.* at 1298-99. Notably, the majority failed to heed, let alone

cite, its own *Aquamar* ruling.

In addition, other circuits have consistently accorded substantial deference and regard to the official views of foreign governments in litigation. In *Jota v. Texaco, Inc.*, 157 F.3d 153 (2d Cir. 1998), the Second Circuit was persuaded by "the official position of the Ecuadorian Ambassador," rather than the position taken by the Ecuadorian Congress. *Id.* at 162. Ambassadors' powers are also rooted in international treaties. The Vienna Convention on Diplomatic Relations directs Ambassadors to "represent * * * the sending State in the receiving State" and to "protect * * * the interests of the sending State and its nationals." Vienna Convention on Diplomatic Relations, Apr. 18, 1961, Art. 3, 23 U.S.T. 3227, 3232, 500 U.N.T.S. 95. The Second Circuit was subsequently faced with a problem of determining Indonesian law in *Karaha Bodas Co. v. Perushahaan Pertambangan*, 313 F.3d 70 (2d Cir. 2002). In *Karaha*, there was a dispute as to the owner of certain funds derived from the sales of natural gas by an oil and gas company owned by Indonesia. Even though Indonesia had a pecuniary interest in the outcome, the Second Circuit deferred to the official views of Indonesia to decide competing interpretations of Indonesian law.

In *In re Oil Spill by the Amoco Cadiz*, 954 F.2d 1279 (7th Cir. 1992), the Seventh Circuit had to interpret the meaning of a French law in order to determine liability of the parties for an oil spill cleanup. While each side offered competing experts on the meaning of French law, the court properly deferred to the French government rather than to the private parties' views: "A court of the United States owes substantial deference to the construction France places on its domestic law * * * . Giving the conclusions of a sovereign nation less respect than those of an administrative agency is unacceptable." *Id.* at 1312.

In a pair of decisions arising out of the same case, the D.C. Circuit ruled that the official view of Brazil's tax laws by its Minister of Finance controlled as to whether certain foreign tax credits were available to a U.S. company. In *Riggs Nat'l Corp. & Subsidiaries v. Comm'r*

of IRS, 163 F.3d 1363 (D.C. Cir. 1999) (*Riggs* I), the court concluded that because the U.S. Tax Court's interpretation of Brazilian law conflicted with the Brazilian's Minister's ruling, the Tax Court ruling could not stand. *Id.* at 1368. The D.C. Circuit concluded that under the act of state doctrine, the "acts of an executive official such as the Minister are valid and binding until declared invalid by a Brazilian court." *Id.* In a subsequent related ruling, the D.C. Circuit again reversed the Tax Court's rejection of certain bank records of the Central Bank of Brazil as violative of the "presumption of regularity" of the actions and records of foreign public officials. *Riggs Nat'l Corp. & Subsidiaries, v. Comm'r of IRS*, 295 F.3d 16, 18 (D.C. Cir. 2002) (*Riggs* II).

In this case, the court below failed to refer to, let alone distinguish, any of these compelling decisions by its own and sister circuits. Rather, the majority was satisfied to offer only lip-service to the views of the Honduran government: "[b]y our decision today, we do not mean to impinge upon any foreign government's sovereignty." App. 39a. While the majority claims that it did not "mean to impinge upon a foreign government's sovereignty," it did so to a very significant and troubling degree.

2. The majority's stated reasons for departing from the requirement to defer to a foreign government's views of its laws, and for short-circuiting its search for authoritative sources to interpret Honduran law in a *de novo* proceeding, evidence a profound misunderstanding of the duty of the court to determine foreign law, raise serious due process questions, and have the potential for undermining our international relations and Congress' purpose for amending the Lacey Act to encompass violations of foreign laws. Thus, the court of appeals so departed from the usual course of proceedings in which foreign law is to be determined so as to "call for an exercise of this Court's supervisory power." *See* S. Ct. Rule 10(a).

a. The fundamental flaw in the panel majority's reasoning for disregarding the Honduran Embassy's view is its characterization that the Honduran government allegedly

"shifted" its position from the trial court to the one made in the court of appeals. But there was never any "shift" in the government's position. The government's position was officially made only at the court of appeals level in its submission of an amicus brief and other formal communications presenting the views of the Republic of Honduras on Honduran law. As Judge Fay succinctly stated in his dissent:

> For emphasis, I repeat again that the majority opinion discusses extensively and is strongly critical of the changed position or shift by the Honduran government. While that terminology may give comfort to the majority, it is simply not accurate. While various government officials gave conflicting opinions regarding the validity of Resolution 030-95, this was before the Honduran courts ruled. The Honduran courts have now ruled and both agree, Resolution 030-95 was null and void. The majority casts this in an unfavorable light akin to something sinister. In my opinion, this is no different than what occurs routinely in our country. Attorneys, and even the Attorney General of a state or the United States, often express opinions about statutes only to find that after a court challenge, they were wrong. That is all that happened here. Some of the experts were right; some were wrong. But, the Honduran courts have now spoken and there is simply no doubt that Resolution 030-95 is null and void as if it never existed.
>
> To suggest that the newly issued statements and opinions of Honduran officials do not carry the weight of the earlier statements is a strange position for members of the judiciary. The so-called "shift in position" is the result of lawful litigation within the courts of a foreign nation. I think we would be shocked should the tables be reversed and a foreign nation simply ignored one of our court rulings because it caused some frustration or inconvenience.

App. 22a. As previously noted, the only Honduran official relied upon by the district court at the foreign law hearing was Liliana Paz, a lower-level official who served as counsel to the Agricultural Ministry. In her testimony, she was of the opinion that Resolution 030-95 was valid and enforceable. But after the crucial ruling by the Honduran Administrative Court that vindicated Mr. McNab's position that Resolution 030-905 was null and void, Ms. Paz recanted her earlier testimony and filed a post-conviction Affidavit with the trial court forthrightly indicating that in light of the intervening Honduran Administrative court decision, her prior testimony was in error.

Thus, the majority not only fails to give deference to the official position of the Honduran government, it blindly insists that the "district courts and the government of the United States * * * have the right to rely upon" Ms. Paz's now-recanted testimony. App. 22a. It was error for the majority to put more stock in recanted testimony than in a more reliable testimony and evidence based on subsequent legal developments that clarified the law.[6] The majority appeared to base its rush to judgment on determining foreign law during a *de novo* proceeding for its desire to achieve "finality" with the process and proceedings that determine foreign law, notwithstanding that this case was not final and that *de novo* proceedings on matters of law remain open for the purpose of determining the current state of the law at the time of the relevant level of review.

b. More troubling, the majority's additional reason for disregarding the Honduran government's views and instead focusing on "finality" in the search for the meaning of Honduran law was the suggestion that criminal defendants with "means and connections" might

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[6] Ms. Paz was apparently not even duly authorized to provide the trial court with Honduras' official view of its laws. For that reason alone, her testimony should have been rejected. *See Access Telecom, Inc. v. MCI Telecomms. Corp.*, 197 F.3d 694, 714 (5th Cir. 1999) (court declines to rely on an unauthorized foreign official's interpretation of foreign law).

> lobby[] and prevail[] upon that country's officials to invalidate a particular law serving as the basis for his conviction in the United States. Such a scenario would completely undermine the purpose of the Lacey Act. There would cease to be any reason to enforce the Lacey Act, at least with respect to foreign law violations, if every change of position by a foreign government as to the validity of its laws could invalidate a conviction.

App. 13a. The majority's suggestion that improper pressure or bribes might produce a result that would foreclose a court from examining a possible Lacey Act violation is simply not true. Federal courts would not be bound to the "paid" views of foreign officials in such circumstances. In *United States v. Labs of Virginia, Inc.*, 2003 U.S. Dist. LEXIS 12900 (July 22, 2003), the district court noted:

> The corruption exception to the act of state doctrine also seems applicable in this case. Under this exception, "even an unrepudiated act of state may be scrutinized by the courts if it resulted from the corruption of government officials." *Dominicus Americana Bohio v. Gulf & W. Indus., Inc.*, 473 F. Supp. 680, 690 (S.D.N.Y. 1979) (citing *Hunt v. Mobil Oil Corp.*, 550 F.2d 68 (2d Cir. 1977)). This exception rests on the concept that allegations of wrongdoing on the part of foreign sovereigns' agents are "beyond the umbrella of the Act of State Doctrine" because "such activity would be violative of the Foreign Corrupt Practices Act of 1977 * * * and * * * to shield such activity would be violative of the spirit of the Act." See *Sage Int'l, Ltd. v. Cadillac Gage Co.*, 534 F. Supp. 896, 910 (E.D. Mich. 1981).

Id. at *20, n.5. There certainly was no indication or suggestion in this case that the Honduran court rulings and official government views were improperly procured in any way; accordingly, the majority's speculation about hypothetical abuses is simply no good reason to forego the

deference due to Honduras in this case.

c. The majority proffered an equally noxious reason for ignoring the Honduran government: a favorable ruling for the defendants in this case may set a precedent for defendants to challenge the validity of laws and regulation that the government used to deprive them of their liberty and property.

> Acceptance of the Honduran government's current interpretation of its laws as determinative of the validity of the laws would set the foundation for future Lacey Act defendants to seek postconviction invalidation of the underlying foreign laws.

App. 13a. This justification for ignoring the views of a foreign government is repugnant to the due process rights of convicted defendants to challenge the validity of *any* law -- whether local, state, federal, or foreign -- that served as the basis for a defendant's prosecution and conviction. This Court should not tolerate such a threat to liberty and the rule of law.

d. As a related reason for ignoring the views of the Honduran Government, the majority claims those views may differ from those given initially to federal law enforcement by low-level foreign government employees. This state of affairs allegedly

> would completely undermine the purpose of the Lacey Act. There would cease to be any reason to enforce the Lacey Act, at least with respect to foreign law violations, if every change of position by a foreign government as to the validity of its laws could invalidate a conviction.

App. 14a. As previously noted, the majority couched its preference to limit its search for the authoritative interpretation of foreign law on the basis of finality: "there must be some finality with representations of foreign law by foreign governments." In the first place, there was never any "change of position of the foreign government" as to

the validity of the laws in question.

More importantly, accepting the authoritative views of a foreign government as to the validity of its own wildlife and fishing laws would not "undermine the purpose of the Lacey Act." To the contrary, the Lacey Act should not be viewed "as increasing the federal role in managing wildlife, but as a federal tool to aid the states [and foreign governments] in enforcing their own laws concerning wildlife." S. Rep. No. 123, 97th Congress, 1st Sess. (1981), reprinted in 1981 U.S.C.C.A.N. 1748. The Act "improves existing Federal tools designed *to aid states and foreign nations in enforcing their own wildlife laws.*" S. Rep. No. 736, 97th Congress, 1st Sess., 127 Cong. Rec. 4737 (1981) (remarks of Senator Chaffee). In this case, the Republic of Honduras has declared that its predicate laws are invalid and unenforceable in their own country, and thus, do not want the aid offered and given by the federal prosecutors and regulators here; in fact, Honduras affirmatively and officially rejects this assistance as a matter of their own law. Thus, it is the decision by the court of appeals that twists and undermines the Lacey Act, and in so doing, puts a strain on the relations between the United States and Honduras.

C. This Court Should Grant Review Because of the Due Process Question Presented by the Court of Appeals' Refusal to Consider Authoritative Sources of Honduran Law in the Interests of "Finality."

This case also raises the precise issue on which this Court recently granted certiorari, whether due process requires changes in the criminal law to apply retroactively to pending criminal prosecutions. In *Fiore v. White*, 531 U.S. 225, 226 (2001), this Court "granted certiorari in part to decide when, or whether, the Federal Due Process Clause requires a State to apply a new interpretation of a state criminal statute retroactively to cases on collateral review." This Court ultimately disposed of that case on other grounds, namely that there was only a clarification, not a new interpretation, of a state criminal statute.

This case presents the issue left open in *Fiore*. The federal government obtained a conviction based on violation of a Honduran regulation that a Honduran court has since declared void. The panel majority refused to apply on a retroactive basis the Honduran court's ruling to this prosecution in the interest of finality. Indeed, in *Fiore* this court granted certiorari to address the intersection of due process and finality even though the conviction was final and the case reached this Court through writ of habeas corpus. Here, in contrast, the conviction is not final but is still on direct review. Thus there is an even stronger due process claim, and weaker interest in finality, at issue on this appeal. In addition, this Court recently rejected the panel majority's concern with finality. *See also Bunkley v. Florida*, 123 S. Ct. 2020 (2003).

II. WHETHER THE LACEY ACT'S "FOREIGN LAW" PROVISION ENCOMPASSES VIOLATIONS OF FOREIGN REGULATIONS IS AN IMPORTANT QUESTION OF FEDERAL LAW THAT WAS DECIDED BY THE COURT OF APPEALS IN A WAY THAT DOES VIOLENCE TO CARDINAL RULES OF STATUTORY CONSTRUCTION, INCLUDING THE RULE OF LENITY, AND IMPLICATES THE REACH OF OTHER FEDERAL STATUTES.

The Lacey Act provides in pertinent part that "it is unlawful for any person * * * to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce * * * any fish or wildlife taken, possessed, transported, or sold in violation of any *law or regulation* of any State or in violation of any *foreign law*." 16 U.S.C. § 3372(a)(2)(A) (emphasis added). The Petitioners argued below that even if the Honduran regulations and resolutions were valid, Congress did not make the violation of such foreign *regulations* a predicate offense for a Lacey Act criminal charge as it did for the violation of a State regulation, or for that matter, for the violation of a "*regulation* of the United States." 16 U.S.C. § 3372(a)(1) (emphasis added). Rather, Congress quite clearly limited

the scope of the Lacey Act only to foreign *law,* the same term Congress used when referring to State *law* and United States *law*, namely, statutory law, not regulations. Under settled canons of statutory interpretation, foreign regulations may not serve as a predicate for liability under the Lacey Act, and no resort to legislative history is required or permitted.

In effectively rewriting the Lacey Act for Congress, the court of appeals simply decreed that "regulations and other such legally binding provisions that foreign governments may promulgate to protect wildlife [and fish] are encompassed by the phrase 'any foreign law.'" App. 13a. By engaging in this act of judicial lawmaking, the court of appeals did violence to cardinal rules of statutory construction, impermissibly resorted to a selective examination of extrinsic legislative materials, and speculated as to the legislators' shortcomings for failing to expressly include foreign regulations as a predicate for liability under the Lacey Act.

Even if extrinsic legislative material were examined, one would find that in 1981 Congress not only expressly *repealed* the predecessor Lacey Act which explicitly made a violation of a foreign "regulation" a predicate offense -- and thereby rejected a broader reading of "foreign law." Congress also rejected a proposed definition in the amending legislation that would have expressly *included* foreign "regulations" within the definition of "foreign law." At the very least, whether the term "foreign law" in the Lacey Act includes foreign regulations is ambiguous; under such circumstances, the court of appeals should have applied the Rule of Lenity in this criminal proceeding and narrowly construed the term to exclude foreign regulations.

Accordingly, review of the court of appeals' judgment on the issue is warranted because of the

fundamental importance of the issue, both in terms of grave consequences to Petitioners and others similarly situated who have been, or are being, unfairly targeted for criminal prosecution and lengthy incarceration for minor foreign regulatory infractions under the Lacey Act, and this issue is likely to arise in many other statutory settings based on foreign "law" as the globalization of America's markets increases. The judgment below is also inconsistent with this Court's decision in *United States v. Eaton*, 144 U.S. 677, 688 (1892), a decision that has spawned some confusion in other courts interpreting the definition of "law."

1. In determining the meaning of the words of a statute, the plain meaning doctrine requires that the court give effect to the unambiguous meaning of those words unless Congress has specified otherwise. *Circuit City Stores v. Adams*, 532 U.S. 105, 115-19 (2001). The meaning of the term "foreign law" in 16 U.S.C. § 3372(a)(2)(A) can easily be determined by examining both the text and context of the words as they appear in the statute without the need to examine legislative history. Section 3371(d) of the Lacey Act states as follows:

> The terms "law," "treaty," "regulation," and "Indian tribal law" *mean* laws, treaties, regulations or Indian tribal laws which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants.

16 U.S.C. § 3371(d) (emphasis added). This definition is somewhat circular and not helpful as the lower court found.

The lower court discovered both broad and narrow dictionary definitions of the word "law," ranging from a "binding custom or practice of a community: a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority" to "law" as simply "[a] statute." App. 12a. The court conceded, however, that this latter and narrower definition of "law" proffered by the defendants, namely, that foreign law meant foreign statutes, was both "plausible" and "reasonable" because, as the court of appeals correctly noted, "to read

'any foreign law' to include regulations would render the word 'regulation' in the earlier phrase any law or regulation of any State meaningless. App. 13a.

Further, the court correctly recognized that "[a] basic premise of statutory construction is that a statute is to be interpreted so that no words shall be discarded as being meaningless, redundant, or mere surplusage.'" App. 13a. (citing *United States v. Canal-Jimenz*, 543 F.2d 1284, 1287 (11th Cir. 1991)). *See also Circuit City*, 532 U.S. at 113 (Court has "deep reluctance" to interpret one portion of a statute so as to render superfluous other language in the same Act.); *Market Co. v. Hoffman*, 101 U.S. 112, 115-16 (1879) ("cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word"). Under this canon, the term "law" must mean a legal commandment that is *different* from a "regulation"; otherwise, the word "regulation" would be superfluous each time it is used in the statute.

The court of appeals should have halted its inquiry right there, or at least fully applied this "basic premise" and other corollary canons of construction by examining other *textual* provisions of the Lacey Act where Congress used the term "regulation" in a manner distinct from the term "law."[7] Instead, the court of appeals violated these fundamental rules of construction in favor of speculation as to the perceived difficulty of legislating. Instead of ending its inquiry with the statute's text, the court proceeded to cite the Ninth Circuit's speculation that "Congress would be hard pressed to set forth a definition [of foreign law] that

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[7] *See, e.g.*, 33 U.S.C. § 3373(a)(1) (providing for civil penalties for "violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State").

would adequately encompass" the "wide range the forms of law may take given the world's many diverse legal and governmental systems." App. 13a. (citing *United States v. 594,464 Pounds of Salmon,* 871 F.2d 824 (9th Cir. 1989); *United States v. Lee*, 937 F.2d 1388, 1391-92 (9th Cir. 1991)). The court then bootstrapped the Ninth Circuit's manufactured excuse for Congress' shortcomings to conclude that the term "foreign law" was ambiguous enough to justify the court's reliance on legislative history.

But Congress was not at all "hard pressed," as the lower court and Ninth Circuit speculated, to draft a sufficiently broad and comprehensive definition of foreign law if it really wanted one. Certainly, the court itself did not find itself "hard pressed" to draft language that it thought Congress must have intended, when it decreed that for purposes of the Lacey Act, "foreign law" means "regulations and other such legally binding provisions that foreign governments may promulgate to protect wildlife [and fish]." App. 16a. Indeed, Congress demonstrated that it was quite up to the legislative task of drafting very similar language in the Lacey Act itself when it wanted to define the more exotic species of "Indian tribal law" as follows:

> The term 'Indian tribal law' means any regulation of, or other rule of conduct enforceable by, any Indian tribe, band, or group * * * .

16 U.S.C. § 3371(c). See *United States v. Big Eagle*, 881 F.2d 539, 541-42 (8th Cir. 1989) (Agreement between State and Indian Tribe fits within Lacey Act's broad definition of "Indian Tribal law"). In short, Congress can craft all-encompassing language when it wants to, and the court was neither required nor permitted to supplement Congress' lawmaking in this manner.

The court's decision to arrogate to itself the ability to supplement Congress' lawmaking not only violated the canons of statutory construction, but the court's premise for doing so fails on its own terms. The court failed to consider the myriad of other laws where Congress distinguished between the terms "foreign law" and "foreign

regulations," including wildlife protection laws similar to the Lacey Act.[8] The court never explained why, if Congress is able to include foreign "regulations" in so many of these other statutes, Congress was unable to do so in the Lacey Act. The court's flawed premise notwithstanding, under the settled canons of statutory interpretation "it is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994)); *Haas v. Internal Revenue Service*, 48 F.3d 1153 (11th Cir. 1995) ("Where Congress knows how to say something but chooses not to, its silence is controlling").

2. Even if the court were permitted to review legislative history, its review of that history was flawed. Simply stated, the Lacey Act used to, but no longer, says what the court wishes it said now. Until the comprehensive amendments of 1981, the Lacey Act proscribed the transportation of wildlife "in violation of any law *or regulation* of any State or foreign country." (formerly 18 U.S.C. § 43(a)(2) (emphasis added). The Lacey Act

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[8] *See, e.g.*, 19 U.S.C. § 1527 (restricting the importation of wildlife contrary to "the *laws or regulations of any country*, dependency, province, or other subdivision of government") (emphasis added); 8 U.S.C. § 1182(a)(2)(A)(i)(II) (alien inadmissible if convicted of "any *law or regulation* of a State, the United States, or a foreign country relating to a controlled substance * * *) (emphasis added); 22 U.S.C. § 4342(c) ("importation, sale, or other disposition of personal property within a foreign country which violates its *laws or regulations* or governing international law * * * shall be grounds for disciplinary action against an employee") (emphasis added); 10 U.S.C. § 2324(d)(2)(D) (describing "payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or *foreign laws and regulations*") (emphasis added).

Amendments of 1981 expressly repealed both the entire Lacey Act and the Black Bass Act. 16 U.S.C. 3378(b)(1), (2). During the amendment process, Congress considered and rejected an expansive definition of "foreign law" in the original Senate bill.

> Sec. 2. For purposes of this act --
> * * *
> (b) The term "foreign law" means laws *or regulations* of a foreign country which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife.

S. 736, 97th Cong., 1st Sess., 127 Cong. Rec. 4338 (March 19, 1981) (emphasis added). In the final version of the bill as passed by the Senate, this definition of "foreign law" was replaced with the somewhat circular definition in Section 2(d), which is the current version in the law. 16 U.S.C. § 3372(d).

In short, Congress passed up the opportunity to adopt the broader definition of "foreign law" that the lower court insisted Congress surely meant to insert into the Lacey Act Amendments. By both repealing the pre-1981 foreign "law or regulation" provision, and rejecting the broad proposed definition of "foreign law" that included foreign "regulations," Congress meant what it said, and said what it meant. *Circuit City*, 532 U.S. at 115-19. That should have been the end of the inquiry into legislative history. Congress is presumed to act "intentionally and purposefully" when it decides to include or exclude provisions from the law it enacts. *Bates v. United States*, 522 U.S. 23, 30 (1997).

Instead, the court grudgingly conceded only that "certain parts of the legislative history of the Lacey Act [ ] support the defendants' position to some extent." App. 15a. Treating this stingy concession as a mere nuisance, the court proceeded to discover that "Congress clearly stated that the amendments were meant to strengthen the existing wildlife protections laws and to 'provide [the government] the tools needed to effectively control the

massive illegal trade in fish, wildlife and plants.'" App. 15a. But these "clear statements" by the "Congress" turn out to be simply remarks by Senator Chafee and Congressman Breaux. They do not compel a rejection of the textual analysis discussed since many provisions of the new law, such as increased penalties and the like, are not affected by a narrow reading of the term "foreign law."

As this Court has declared: "It is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed. *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 79 (1998). And, as Justice Scalia has admonished, "The greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators." *Conroy v. Aniskoff*, 507 U.S. 511, 610 (1993) (Scalia, J., concurring). In amending the Lacey Act, Congress rejected the term "regulation" when describing foreign law, and thus limited the scope of the Lacey Act only to foreign law that did not include foreign regulations. "[A]nd if that is not what Congress meant, then Congress has made a mistake and Congress will have to correct it." *Id.* at 528 (Scalia, J., concurring.).

3. Review is also warranted because the lower court's conclusion that the term "law" also encompasses the term "regulation" is inconsistent with a decision of this Court that has caused some confusion among the lower courts that have addressed the issue. In *United States v. Eaton,* 144 U.S. 677 (1892), this Court held that a failure to comply with a *regulation* promulgated pursuant to a statute did not subject a defendant to penalties prescribed in that statute for "omit[ting], neglect[ing], or refus[ing] to do, or caus[ing] to be done, any of the things *required by law*," 144 U.S. at 685 (emphasis added), on the grounds that "[i]f Congress intended to make [violation of the *regulation*] an offence[,] * * * it would have done so distinctly." *Id.* at

688. This Court reasoned that to expand the word "law" to include "regulation" would be "a very dangerous principle." *Id.*[9]

In short, this Court should grant review in order to clarify its prior decisions on the issue and to provide necessary guidance to the lower courts.

4. While Petitioners maintain that a proper interpretation of the Lacey Act demonstrates that foreign regulations are not encompassed in the term "foreign law," at the very least, its meaning is ambiguous to trigger the application of the Rule of Lenity.

The Rule of Lenity "is rooted in fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his

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[9] Admittedly, the Court in *United States v. Howard*, 352 U.S. 212 (1957), ruled that the prior Lacey Act, which at the time provided for violations of only "state law," and not foreign law, encompassed certain state regulations where the state law *expressly* made it an offense to violate regulations promulgated thereunder. But that decision is of limited import in this case because the violation of one or more of the Honduran regulations at issue may result only in small civil penalties, not criminal penalties. Furthermore, prior to its flawed decision in *United States v. 594,464 Pounds of Salmon,* the Ninth Circuit held that a statute prohibiting operation of an "illegal gambling business," defined as a gambling business that "is a violation of the *law* of a state or political subdivision in which it is conducted," does not apply to a Nevada Gaming Commission *regulation* that leads only to civil sanctions. *United States v. Gordon*, 464 F.2d 357, 357-58 (9th Cir. 1972) (per curiam). And in *United States v. Mitchell*, 39 F.3d 465 (1994), Circuit Judge Murnaghan vigorously dissented from the majority finding that the anti-smuggling provisions of 18 U.S.C. § 545, which prohibits importing merchandise "contrary to law," is "unarguably ambiguous" with respect to whether it covers importing merchandise contrary to *regulations*, and thus, the rule of lenity requires reversal of conviction. *Id.* at 476 (Murnaghan, J., dissenting).

conduct is prohibited." *Dunn v. United States*, 442 U.S. 100, 112 (1979) (citations omitted). *See also Rewis v. United States*, 401 U.S. 808, 812 (1971). As this Court has noted, "[w]hen choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *United States v. Universal C. I. T. Credit Corp.*, 344 U.S. 218, 221-222 (1952).

Accordingly, the court below erred by not applying the Rule of Lenity, not only with respect to the meaning of the term "foreign law," but also with respect to the ambiguity there may have been with respect to the meaning of Honduran Law as discussed in Point I.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Barry M. Hartman
Dylan B. Carp
Kirkpatrick & Lockhart, LLP
1800 Massachusetts Ave. NW
Washington, DC 20036
(202) 778-9000

Daniel J. Popeo
Paul D. Kamenar
Counsel of Record
Washington Legal Foundation
2009 Massachusetts Ave. NW
Washington, DC 20036
(202) 588-0302

Counsel for Petitioners

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